

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AC-2012-32

KMJ/CORBIN & COMPANY, LLP
555 Anton Blvd., Suite 1000
Costa Mesa, CA 90626

Certified Public Accountancy Partnership
Certificate No. 6605,

KENDALL GLADE MERKLEY
1570 Canyon Meadows Lane
Glendora, CA 91740

Certified Public Accountant Certificate No.
53860,

ANTHONY JOSEPH PRICE
10132 Merrimac Drive
Huntington Beach, CA 92646

Certified Public Accountant Certificate No.
82793,


Respondents.

DECISION AND ORDER AS TO KENDALL GLADE MERKLEY

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter as to Kendall Glade Merkley.

This Decision shall become effective on March 3, 2013.

It is so ORDERED February 1, 2013.



FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 RON ESPINOZA
Deputy Attorney General
4 State Bar No. 176908
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Attorneys for Complainant
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CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

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22 Certified Public Accountant Certificate No.
23 82793,

24 Respondents.

Case No. AC-2012-32

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
KENDALL GLADE MERKLEY**

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1 In the interest of a prompt and speedy settlement of this matter, consistent with the public
2 interest and the responsibility of the California Board of Accountancy (CBA or Board) of the
3 Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement
4 and Disciplinary Order which will be submitted to the CBA for approval and adoption as the final
5 disposition of the Accusation as to Kendall Glade Merkley.

6 PARTIES

7 1. Patti Bowers (Complainant) is the Executive Officer of the California Board of
8 Accountancy. She brought this action solely in her official capacity and is represented in this
9 matter by Kamala D. Harris, Attorney General of the State of California, by Ron Espinoza,
10 Deputy Attorney General.

11 2. Kendall Glade Merkley (Respondent) is represented in this proceeding by Stephen J.
12 Tully, Esq., whose address is: Garrett & Tully, 4165 E. Thousand Oaks Blvd., Suite 201,
13 Westlake Village, California, 91362.

14 3. On or about September 22, 1989, the Board issued Certified Public Accountant
15 Certificate No. 53860 to Respondent Kendall Glade Merkley. The Certified Public Accountant
16 license was in full force and effect at all times relevant to the charges brought in Accusation No.
17 AC-2012-32 and will expire on March 31, 2013, unless renewed.

18 JURISDICTION

19 4. Accusation No. AC-2012-32 was filed before the California Board of Accountancy,
20 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
21 and all other statutorily required documents were properly served on Respondent on
22 December 27, 2012. Respondent timely filed his Notice of Defense contesting the Accusation.

23 5. A copy of Accusation No. AC-2012-32 is attached as Exhibit A and incorporated
24 herein by reference.

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1 settlement, without notice to or participation by Respondent or his counsel. By signing the
2 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
3 to rescind the stipulation prior to the time the CBA considers and acts upon it. If the CBA fails to
4 adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order
5 shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
6 between the parties, and the CBA shall not be disqualified from further action by having
7 considered this matter.

8 13. The parties understand and agree that copies of this Stipulated Settlement and
9 Disciplinary Order, including the signatures thereto, shall have the same force and effect as the
10 originals.

11 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
12 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
13 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
14 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
15 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
16 writing executed by an authorized representative of each of the parties.

17 15. In consideration of the foregoing admissions and stipulations, the parties agree that
18 the CBA may, without further notice or formal proceeding, issue and enter the following
19 Disciplinary Order:

20 **DISCIPLINARY ORDER**

21 **IT IS HEREBY ORDERED** that Certified Public Accountant Certificate No. 53860 issued
22 to Respondent Kendall Glade Merkley is revoked. However, the revocation is stayed and
23 Respondent is placed on probation for three (3) years on the following terms and conditions.

24 **1. Suspension**

25 Certified Public Accountant Certificate No. 53860 issued to Respondent Kendall Glade
26 Merkley is suspended for seven (7) months. During the period of suspension the respondent shall
27 engage in no activities for which certification as a Certified Public Accountant or Public
28 Accountant is required as described in Business and Professions Code, Division 3, Chapter 1,

1 Section 5051.

2 **2. Obey All Laws**

3 Respondent shall obey all federal, California, other states' and local laws, including those
4 rules relating to the practice of public accountancy in California.

5 **3. Cost Reimbursement**

6 Respondent shall reimburse the CBA a sum not to exceed \$50,000 for its investigation and
7 prosecution costs of this matter, including those costs of probation monitoring. Respondent shall
8 reimburse the CBA \$29,163 for its current investigation and prosecution costs within thirty (30)
9 days of the date the CBA's decision is final. In addition, the CBA will periodically present
10 Respondent with a certified statement of costs to date, including additional costs incurred during
11 probation, and Respondent shall pay those costs to the CBA within thirty (30) days thereafter. If
12 costs are billed after the completion of the probationary period, the obligation to pay the costs
13 shall continue, but the probation shall not be extended thereby. Any costs owed hereunder,
14 exclusive of costs of probation monitoring, shall be reduced by any payments made by co-
15 Respondents to Accusation No. AC-2012-32, KMJ/Corbin & Company, LLP, and Anthony
16 Joseph Price.

17 **4. Submit Written Reports**

18 Respondent shall submit, within ten (10) days of completion of the quarter, written reports
19 to the CBA on a form obtained from the CBA. The Respondent shall submit, under penalty of
20 perjury, such other written reports, declarations, and verification of actions as are required. These
21 declarations shall contain statements relative to Respondent's compliance with all the terms and
22 conditions of probation. Respondent shall immediately execute all release of information forms
23 as may be required by the CBA or its representatives. Respondent shall also comply with all
24 requirements imposed by the "Order Instituting Public Administrative and Cease-and-Desist
25 Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule
26 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial
27 Sanctions and a Cease-and-Desist Order" issued by the United States Securities and Exchange
28 Commission (SEC) on September 13, 2010, and report such compliance to the CBA in his

1 quarterly reports.

2 **5. Personal Appearances**

3 Respondent shall, during the period of probation, appear in person at interviews/meetings as
4 directed by the CBA or its designated representatives, provided such notification is accomplished
5 in a timely manner.

6 **6. Comply With Probation**

7 Respondent shall fully comply with the terms and conditions of the probation imposed by
8 the CBA and shall cooperate fully with representatives of the California Board of Accountancy in
9 its monitoring and investigation of the respondent's compliance with probation terms and
10 conditions.

11 **7. Practice Investigation**

12 Respondent shall be subject to, and shall permit, a practice investigation of the respondent's
13 professional practice. Such a practice investigation shall be conducted by representatives of the
14 CBA, provided notification of such review is accomplished in a timely manner.

15 **8. Comply With Citations**

16 Respondent shall comply with all final orders resulting from citations issued by the
17 California Board of Accountancy.

18 **9. Tolling of Probation for Out-of-State Residence/Practice**

19 In the event respondent should leave California to reside or practice outside this state,
20 respondent must notify the CBA in writing of the dates of departure and return. Periods of non-
21 California residency or practice outside the state shall not apply to reduction of the probationary
22 period, or of any suspension. No obligation imposed herein, including requirements to file
23 written reports, reimburse the CBA costs, and make restitution to consumers, shall be suspended
24 or otherwise affected by such periods of out-of-state residency or practice except at the written
25 direction of the CBA.

26 **10. Violation of Probation**

27 If respondent violates probation in any respect, the CBA, after giving respondent notice and
28 an opportunity to be heard, may revoke probation and carry out the disciplinary order that was

1 stayed. If an accusation or a petition to revoke probation is filed against respondent during
2 probation, the CBA shall have continuing jurisdiction until the matter is final, and the period of
3 probation shall be extended until the matter is final.

4 The CBA's Executive Officer may issue a citation under California Code of Regulations,
5 Section 95, to a licensee for a violation of a term or condition contained in a decision placing that
6 licensee on probation.

7 **11. Completion of Probation**

8 Upon successful completion of probation, respondent's license will be fully restored.


9 **12. Active License Status**

10 Respondent shall at all times maintain an active license status with the CBA, including
11 during any period of suspension. If the license is expired at the time the CBA's decision becomes
12 effective, the license must be renewed within 30 days of the effective date of the decision.

13 ACCEPTANCE

14 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
15 discussed it with my attorney, Stephen J. Tully, Esq. I understand the stipulation and the effect it
16 will have on my Certified Public Accountant Certificate. I enter into this Stipulated Settlement
17 and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
18 Decision and Order of the California Board of Accountancy.

19
20 DATED: 7 January 2013


KENDALL GLADE MERKLEY
Respondent

22 I have read and fully discussed with Respondent Kendall Glade Merkley the terms and
23 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
24 I approve its form and content.

25 DATED: 1-7-13


STEPHEN J. TULLY, ESQ.
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Accountancy of the Department of Consumer Affairs.

Dated: *January 7, 2013*

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General

James M. Ledakis
RON ESPINOZA
Deputy Attorney General
Attorneys for Complainant

SD2012702949
Stipulation.rtf

Exhibit A

Accusation No. AC-2012-32

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 RON ESPINOZA
Deputy Attorney General
4 State Bar No. 176908
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
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A C C U S A T I O N

14 Certified Public Accountancy Partnership
Certificate No. 6605,

15 **KENDALL GLADE MERKLEY**
16 1570 Canyon Meadows Lane
Glendora, CA 91740

17 Certified Public Accountant Certificate No. 53860,

18 **ANTHONY JOSEPH PRICE**
19 10132 Merrimac Drive
Huntington Beach, CA 92646

20 Certified Public Accountant Certificate No. 82793,

21 Respondents.
22

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24 Complainant alleges:

25 **PARTIES**

26 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
27 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs,
28 State of California.

1 7. Code section 5116 states:

2 (a) The board, after appropriate notice and an opportunity for hearing,
3 may order any licensee or applicant for licensure or examination to pay an
4 administrative penalty as provided in this article as part of any disciplinary
5 proceeding or other proceeding provided for in this chapter.

6 (b) The board may assess administrative penalties under one or more
7 provisions of this article. However, the total administrative penalty to be paid by the
8 licensee shall not exceed the amount of the highest administrative penalty authorized
9 by this article.

10 (c) The board shall adopt regulations to establish criteria for assessing
11 administrative penalties based upon factors, including, but not limited to, actual and
12 potential consumer harm, nature and severity of the violation, the role of the person in
13 the violation, the person's ability to pay the administrative penalty, and the level of
14 administrative penalty necessary to deter future violations of this chapter.

15 (d) Administrative penalties assessed under this article shall be in
16 addition to any other penalties or sanctions imposed on the licensee or other person,
17 including, but not limited to, license revocation, license suspension, denial of the
18 application for licensure, denial of the petition for reinstatement, or denial of
19 admission to the licensing examination. Payment of these administrative penalties
20 may be included as a condition of probation when probation is ordered.

21 (e) All administrative penalties collected under this article shall be
22 deposited in the Accountancy Fund.

23 COST RECOVERY

24 8. Code section 5107, subdivision (a), states:

25 The executive officer of the board may request the administrative law
26 judge, as part of the proposed decision in a disciplinary proceeding, to direct any
27 holder of a permit or certificate found to have committed a violation or violations of
28 this chapter to pay to the board all reasonable costs of investigation and prosecution
29 of the case, including, but not limited to, attorneys' fees. The board shall not recover
30 costs incurred at the administrative hearing.

31 FACTS

32 9. Respondent KMJ is an accounting firm registered with the Public Company
33 Accounting Oversight Board (PCAOB) and with offices in Costa Mesa and San Diego,
34 California. Respondent KMJ, through its certified public accountants, Respondents Merkley and
35 Price, conducted audits and reviews of the financial statements of Home Solutions of America,
36 Inc. (HSOA), from 2002 through the second quarter of 2007.

37 10. On or about September 13, 2010, the United States Securities and Exchange
38 Commission (SEC) issued an "Order Instituting Public Administrative and Cease-and-Desist

1 Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule
2 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial
3 Sanctions and a Cease-and-Desist Order" against Respondents. Respondents consented to the
4 entry of the Order against them, without admitting or denying the findings therein, except as to
5 the SEC's jurisdiction over Respondents and the subject matter of the proceedings, which they
6 admitted.

7 11. The SEC Order stated in pertinent part: "While supervising and conducting KMJ's
8 audits and reviews of HSOA's financial statements for 2004, 2005, 2006 and the periods ended
9 March 31 and June 30, 2007, Merkley (except as to 2007) and Price failed to adhere to PCAOB
10 Standards and Rules. In summary, Merkley and Price failed to: (i) obtain sufficient competent
11 evidential matter regarding bonuses, revenues, and cost of revenues with respect to KMJ's 2004,
12 2005, and 2006 audit engagements; (ii) comply with PCAOB Auditing Standard No. 3, *Audit*
13 *Documentation*; (iii) adequately plan the audit and properly supervise assistants in connection
14 with the 2006 engagement; and (iv) conduct reviews of interim financial information in
15 accordance with PCAOB Standards and Rules. Additionally, Merkley caused KMJ to issue
16 inaccurate audit reports in that he should have known that KMJ's audit reports were false because
17 they incorrectly represented that the audits were conducted in accordance with PCAOB standards
18 and that HSOA's financial statements were prepared in conformity with GAAP."

19 12. Based on the foregoing, the SEC Order found that: "KMJ, Merkley and Price engaged
20 in improper professional conduct pursuant to Rules 102(e)(1)(ii) and 102(e)(1)(iv)(B)(2) of the
21 Commission's Rules of Practice and Section 4C of the Exchange Act. Additionally, the
22 Commission finds that Merkley was a cause of HSOA's violations of Sections 13(a) and
23 13(b)(2)(A) of the Exchange Act, and Rules 13a-1 and 13a-13 promulgated thereunder and
24 caused KMJ's violation of Regulation S-X Rule 2-02(b)(1)."

25 13. As a result of these findings, the SEC issued its September 13, 2010, Order:
26 (1) censuring Respondent KMJ; (2) suspending Respondents Price (two years) and Merkley's
27 (three years) privilege of appearing or practicing before the SEC as accountants; and (3) requiring
28 Respondent Merkley to cease and desist from committing or causing any violations and any

1 future violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act, Rules 13a-1 and 13a-13
2 thereunder, and Regulation S-X Rule 2-02(b)(1).

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Discipline by SEC Against KMJ)**

5 14. Respondent KMJ is subject to disciplinary action under Business and Professions
6 Code section 5100, subdivision (l), in that on or about September 13, 2010, the United States
7 Securities and Exchange Commission (SEC) censured Respondent, as alleged in paragraphs 9-13
8 above, which are hereby incorporated by reference.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Discipline by SEC Against Merkley)**

11 15. Respondent Merkley is subject to disciplinary action under Business and Professions
12 Code section 5100, subdivision (l), in that on or about September 13, 2010, the United States
13 Securities and Exchange Commission (SEC) issued an Order suspending Respondent's right to
14 appear or practice before it as an accountant, as well as ordering Respondent to cease and desist
15 from committing or causing any violations and any future violations of certain federal securities
16 laws, as alleged in paragraphs 9-13 above, which are hereby incorporated by reference.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Suspension of Right to Practice Before Governmental Body Against Merkley)**

19 16. Respondent Merkley is subject to disciplinary action under Business and Professions
20 Code section 5100, subdivision (h), in that on or about September 13, 2010, the United States
21 Securities and Exchange Commission (SEC), a governmental body or agency, issued an Order
22 suspending Respondent's right to appear or practice before it as an accountant, as alleged in
23 paragraphs 9-13 above, which are hereby incorporated by reference.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Discipline by SEC Against Price)**

26 17. Respondent Price is subject to disciplinary action under Business and Professions
27 Code section 5100, subdivision (l), in that on or about September 13, 2010, the United States
28 Securities and Exchange Commission (SEC) issued an Order suspending Respondent's right to

1 appear or practice before it as an accountant, as alleged in paragraphs 9-13 above, which are
2 hereby incorporated by reference.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Suspension of Right to Practice Before Governmental Body Against Price)**

5 18. Respondent Price is subject to disciplinary action under Business and Professions
6 Code section 5100, subdivision (h), in that on or about September 13, 2010, the United States
7 Securities and Exchange Commission (SEC), a governmental body or agency, issued an Order
8 suspending Respondent's right to appear or practice before it as an accountant, as alleged in
9 paragraphs 9-13 above, which are hereby incorporated by reference.

10 **PRAYER**

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
12 and that following the hearing, the California Board of Accountancy issue a decision:

13 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
14 Accountancy Partnership Certificate No. 6605 issued to KMJ/Corbin & Company, LLP;

15 2. Revoking or suspending or otherwise imposing discipline upon Certified Public
16 Accountant Certificate No. 53860 issued to Kendall Glade Merkley;

17 3. Revoking or suspending or otherwise imposing discipline upon Certified Public
18 Accountant Certificate No. 82793 issued to Anthony Joseph Price;

19 4. Ordering KMJ/Corbin & Company, LLP, Kendall Glade Merkley, and Anthony
20 Joseph Price to pay the California Board of Accountancy an administrative penalty pursuant to
21 Business and Professions Code section 5116;

22 5. Ordering KMJ/Corbin & Company, LLP, Kendall Glade Merkley, and Anthony
23 Joseph Price to pay the California Board of Accountancy the reasonable costs of the investigation
24 and enforcement of this case pursuant to Business and Professions Code section 5107;

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6. Taking such other and further action as deemed necessary and proper.

DATED: 12-27-12



PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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